

## REMARKS

Claims 39-42, 51-54 and 60 are pending in this application. Claims 36-38, 43-50 and 55-59 are cancelled without prejudice by this Amendment. Claims 1-35 have been previously canceled. New Claim 60 is added by this Amendment. Entry of this Amendment and Response, and reconsideration and further reexamination of this application in view thereof is hereby requested.

The Claims have been amended to be commensurate in scope with the subject matter indicated as allowable in the Office Action. Specifically, Claims 39 and 51 have been amended to recite that the elements of closeness to determine game outcome can be one of mathematical or physical closeness, or a combination thereof. New Claim 60 has been added and is written in step-plus-function form, in accord with 35 U.S.C. §112, ¶6, and likewise contains the elements of mathematical and/or physical closeness. In making the present amendment, Applicant does not intend to limit the claims to their literal elements, or otherwise intend to surrender any rights to assert that the claims are entitled to cover a range of equivalents for each element.

### Rejection Under 35 U.S.C. §102(b)

In the Office Action, Claims 36-38, 43-50, and 55-59 were rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 4,033,588 to *Watts*. It was argued that the limitations of all rejected claims were disclosed by *Watts*. All of the rejected claims have been canceled by the present amendment, and consequently, Applicant traverses this rejection insofar as it pertains to the pending claims as amended.

Amended independent claims 39 and 51 have been amended to recite that the game outcome is determined with closeness defined by at least one of mathematical closeness and physical closeness. The Office Action stated that these elements are not present in *Watts*. Claims 40-42 and 52-54, as respectively dependent on amended Claims 39 and 51, and new Claim 60 likewise contain these elements. Accordingly, because the Office Action concedes that the elements of the closeness being either

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mathematical or physical are not disclosed in *Watts*, *Watts* cannot anticipate the claims as amended and this rejection as it pertains thereto must be withdrawn.

Allowable Subject Matter

The Examiner indicated that Claims 39-42 and 51-54 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 39 and 51 have been amended in the manner suggested by the Office Action. Further, new Claim 60 contains identical subject matter to that indicated as allowable. Therefore, Applicant submits that pending Claims 39-42, 51-54 and 60 are all in a scope indicated as allowable in the Office Action and should accordingly be allowed.

Prior Art Made of Record

Applicant has reviewed the reference made of record in the Office Action but not used to reject the present application, namely "Point & Non-Poker Games for Seven-Twenty-Seven," [<http://pokertable.com/gamenon.html>], page last updated 2/21/2000, pp. 1-5. Applicant agrees with the Examiner that the cited reference does not anticipate or render obvious any claim of the present invention.


**CONCLUSION**

In view of the foregoing amendments and remarks, Applicant respectfully submits that Claims 39-42, 51-54 and 60, as amended, are in condition for allowance and notification to that effect is earnestly solicited. If necessary, the Examiner is invited to telephone Applicant's attorney (404-873-8500) to facilitate prosecution of this application.

No additional fees are believed due. However, the Commissioner is hereby authorized to charge any additional fees which may be required, including any necessary extensions of time, which are hereby requested, to Deposit Account No. 502666.

Respectfully submitted,

Michael L. White,  
By his Representatives,

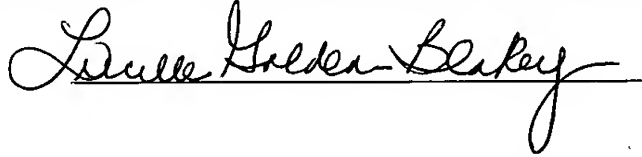
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CERTIFICATE UNDER 37 CFR 1.8

The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop AF, Commissioner of Patents, P.O. Box 1450, Alexandria VA 22313-1450, on this 2nd day of March, 2004.

Lucille Golden-Blakey



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Application Serial No. 10/029,398

Attorney Docket No. 20339.3

AMENDMENT AFTER FINAL dated March 2, 2004

Reply to Final Office Action of December 2, 2003